

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jan 06, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

TORCHSTAR CORP., a California

corporation,

Plaintiff/Counter-Defendant,

v.

HYATECH, INC., a Washington

corporation,

Defendant/Counter-Claimant.

No. 2:22-CV-00110-SAB

**ORDER DENYING  
PLAINTIFF'S SPECIAL  
MOTION TO STRIKE**

Before the Court is Plaintiff Torchstar Corp.'s Special Motion to Strike Pursuant to RCW 4.105.010, *et seq.*, ECF No. 27. The motion was considered without oral argument. Plaintiff is represented by Clifford Davidson, Dylan Burstein, and Jason Yu. Defendant is represented by Todd Reuter.

**Background Facts**

On May 1, 2022, Plaintiff initiated this action. On July 20, 2022, it filed a Second Amended Complaint, asserting four causes of action: (1) tortious interference with business expectancy; (2) copyright infringement; (3) violation of California's Unfair Competition Law; and (4) Unfair Competition in violation of the Lanham Act. Plaintiff sells LED products on Amazon web marketplaces. Plaintiff alleges that Defendant copied essentially the entirety of its Amazon sales pages in order to sell the same produce on Amazon. Plaintiff alleges that

1 Defendant copied the photographs as well as the product descriptions. Plaintiff also  
2 alleges that Defendant is unlawfully passing Plaintiff's goods off as its own. It  
3 asserts that Defendant used the "Hyatech" brand name to market and sell  
4 Plaintiff's LED products, which created a false impression that Defendant, not  
5 Plaintiff, was the origin of the LED products.

6 Defendant filed its Answer to the Second Amended Complaint on August 5,  
7 2022, asserting a counterclaim for Tortious Interference with a Business  
8 Expectancy. Defendant asserts that Plaintiff had knowledge of its business  
9 expectancy in all its products being commercially available for sale on Amazon,  
10 and Plaintiff intentionally interfered with its business expectancy, through bad faith  
11 conducts including falsely accusing Defendant of copyright infringement on  
12 Plaintiff's marketing materials, while knowing that Plaintiff's marketing materials  
13 could not satisfy the minimum degree of creativity to qualify for copyright  
14 protection. It alleges that Plaintiff's intentional interference was through improper  
15 means and for an improper purpose by developing false accusations against it with  
16 an intent to destroy its business.

17 In support of its counterclaim, Defendant asserts the following: Plaintiff  
18 induced Amazon to de-list Defendant by doing the following: (a) by suggesting to  
19 Amazon that Plaintiff had copyright infringement claim against Defendant when  
20 no copyright was registered at the time and the validity of its alleged unregistered  
21 rights was dubious at best; (b) by basing its complaints on purported copyright  
22 protection in product descriptions that Plaintiff had itself copied from another  
23 seller who was in the market before Plaintiff; and (c) by asserting copyright  
24 protection in photographs even after Defendant had shown Plaintiff that  
25 Defendant's own photographer took Defendant's pictures.

26 Defendant asserts that Plaintiff registered its copyright with the U.S.  
27 Copyright Office only after Defendant filed its Answer and Counterclaim in June  
28 2022. After it did, it then added a copyright infringement claim to its Amended

1 Complaints.

2 Plaintiff now moves to dismiss Defendant's counterclaim pursuant to the  
3 Washington Uniform Public Expression Protection Act, Wash. Rev. Code §§  
4 4.105.010-.903 (the Washington anti-SLAPP statute). Plaintiff asserts Defendant's  
5 counterclaim is barred for three reasons: (1) both Plaintiff's report of copyright  
6 infringement to Amazon and its lawsuit against Defendant constitute protected  
7 communications in connection with judicial proceedings; (2) Defendant cannot  
8 establish a likelihood of success on its counterclaim because the *Noerr-Pennington*  
9 doctrine bars the claim and (3) Defendant cannot make out the required elements  
10 of a tortious interference claim. As Plaintiff sees it, Defendant's counterclaims are  
11 based on Plaintiff's prelitigation communications with Amazon and the instant  
12 lawsuit. Plaintiff asserts that Defendant is simply suing it for pursuing its right to  
13 petition this Court, which is what the UPEPA and the First Amendment protect.

#### 14 **Applicable Law**

##### 15 **1. Washington's Uniform Public Expression Protection Act**

16 Washington was the first state to adopt the Uniform Public Expression  
17 Protection Act. The Uniform Public Expression Protections Act provides for early  
18 adjudication of baseless claims aimed at preventing an individual from exercising  
19 the constitutional right of free speech. *Jha v. Khan*, \_\_ P.3d \_\_, 2022 WL  
20 16918101 (Wash. Ct. App. 2022).

21 The UPEPA applies to any claim asserted "against a person based on the  
22 person's:"

- 23 (a) Communication in a legislative, executive, judicial, administrative, or  
other governmental proceeding;
- 24 (b) Communication on an issue under consideration or review in a  
25 legislative, executive, judicial, administrative, or other governmental  
proceeding;
- 26 (c) Exercise of the right of freedom of speech or of the press, the right to  
27 assemble or petition, or the right of association, guaranteed by the United  
28 States Constitution or Washington state Constitution, on a matter of public  
concern.

1 Wash. Rev. Code § 4.105.010(2).

2 There are certain exemptions that are enumerated in Wash. Rev. Code §  
3 4.105.010(3)(a). Notably, this provision does not apply against a person primarily  
4 engaged in the business of selling or leasing good or services if the cause of action  
5 arises out of a communication related to the person's sale or lease of the goods or  
6 services. § 4.105.010(3)(a)(iii)

7 Section 4.105.060 provides the standards for ruling on a special motion to  
8 dismiss.

9 (1) In ruling on a motion under RCW 4.105.020, the court shall  
10 dismiss with prejudice a cause of action, or part of a cause of action,  
if:

11 (a) The moving party establishes under RCW 4.105.010(2)  
that this chapter applies;

12 (b) The responding party fails to establish under RCW  
13 4.105.010(3) that this chapter does not apply; and

14 (c) Either:

15 (i) The responding party fails to establish a prima facie  
case as to each essential element of the cause of action; or

16 (ii) The moving party establishes that:

17 (A) The responding party failed to state a cause  
of action upon which relief can be granted; or

18 (B) There is no genuine issue as to any material  
fact and the moving party is entitled to judgment as a  
19 matter of law on the cause of action or part of the cause  
of action.

20 In ruling on a motion under § 4.105.020, the court shall consider the  
21 pleadings, the motion, any reply or response to the motion, and any evidence that  
22 could be considered in ruling on a motion for summary judgment under superior  
23 court civil rule 56. § 4.105.050.

## 24 **2. *Noerr-Pennington* doctrine**

25 The *Noerr-Pennington* doctrine provides that “those who petition any  
26 department of the government for redress are generally immune from statutory  
27 liability for their petitioning conduct.” *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 929  
28

1 (9th Cir. 2006). It derives from the First Amendment’s guarantee of “the right of  
2 the people . . . to petition the Government for a redress of grievances.” *Id.*  
3 (quotation omitted).

4 On the other hand, the Ninth Circuit has instructed that neither the Petition  
5 Clause nor the *Noerr-Pennington* doctrine protects sham petitions. *Id.* Under the  
6 sham litigation exception, the party seeking to impose liability must establish both  
7 that the lawsuit, or petition is: (1) “objectively baseless in the sense that no  
8 reasonable litigant could realistically expect success on the merits” and (2) “an  
9 attempt to interfere directly with the business relationship of a competitor through  
10 the use of the governmental process—as opposed to the outcome of that process.  
11 *Rock River Commc’n, Inc. v. Universal Music Grp., Inc.*, 745 F.3d 343, 351 (9th  
12 Cir. 2014) (quotation omitted).

13 Whether the sham exception to the *Noerr-Pennington* doctrine applies is a  
14 question of fact and summary judgment on the defense is not appropriate where the  
15 facts are disputed. *Id.* at 352.

16 Recently, in an unpublished opinion, the Ninth Circuit held that while  
17 prelitigation settlement demands and cease-and-desist letters sent to potential  
18 defendants are immune from liability under the *Noerr-Pennington* doctrine, the  
19 doctrine does not apply to communications sent a third party and which did not  
20 propose or threaten litigation. *See Thimes Solutions, Inc. v. TP Link USA Corp.*,  
21 2022 WL 1125628 (9th Cir. 2022).

### 22 **3. Tortious Interference with a Business Expectancy**

23 To succeed on a claim for tortious interference, a plaintiff must prove (1) the  
24 existence of a valid contractual relationship or business expectancy; (2) the  
25 defendant’s knowledge of and intentional interference with that relationship or  
26 expectancy; (3) a breach or termination of that relationship or expectancy induced  
27 or caused by the interference; (4) an improper purpose or the use of improper  
28 means by the defendant that caused the interference; and (5) resultant damage.

1 *Eugster v. City of Spokane*, 121 Wash. App. 799, 811 (2004). Because a tortious  
2 interference claim requires wrongful conduct, the claimant must show  
3 “purposefully improper interference.” *Leingang v. Pierce Cnty. Med. Bureau, Inc.*,  
4 131 Wash. 2d 133, 157 (1997). “Exercising in good faith one’s legal interests is not  
5 improper interference.” *Id.*

### 6 **Analysis**

7 The Court finds that the *Noerr-Pennington* doctrine does not apply to  
8 Plaintiff’s complaints to Amazon, a third-party. There is nothing in the record to  
9 suggest that these complaints, which were delivered solely to Amazon, proposed or  
10 threaten litigation. *See Times Solutions, Inc.*, 2022 WL 1125628 at \*2. The Court  
11 does not believe a party has a constitutional right to “petition” Amazon for redress  
12 of grievances. That said, to the extent Defendant is seeking liability and damages  
13 because Plaintiff filed its lawsuit, the Court find that questions of fact exist  
14 whether certain claims that are being asserted by Plaintiff qualify as sham  
15 litigation.

16 The Court finds that § 4.105.060 does not apply because Plaintiff has not  
17 shown that Defendant failed to state a cause of action upon which relief can be  
18 granted—the Court finds it did—nor did Plaintiff prove there are no genuine  
19 issues as to any material facts.<sup>1</sup> On the contrary, there are genuine issues of  
20 material fact that prevent the Court from dismissing the counterclaim.  
21 Additionally, if the facts as alleged by Plaintiff are believed, a reasonable jury  
22 could find for Defendant on its counterclaim.

23 Finally, the Court does not find that any party is entitled to attorneys’ fees  
24 pursuant to Wash. Rev. Code § 4.105.090.

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26 <sup>1</sup>Based on these findings, the Court need not address the parties’ arguments about  
27 whether Plaintiff met its burden under § 4.105.060(a) or whether Defendant met its  
28 burden under § 4.105.060(b).

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff Torchstar Corp.'s Special Motion to Strike Pursuant to RCW  
3 4.105.010, *et seq.*, ECF No. 27, is **DENIED**.

4 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter  
5 this Order and provide copies to counsel.

6 **DATED** this 9th day of January 2023.



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12 Stanley A. Bastian  
13 Chief United States District Judge  
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